Haberstroh Farm Products, Inc. *and* **Karen B. Holk.**
Case 7-CA-20955

14 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 28 December 1983 Administrative Law Judge Walter H. Maloney Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Haberstroh Farm Products, Inc., Mt. Clemens, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice should be substituted for that of the administrative law judge.[2]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The judge inadvertently failed to include in his notice language reflecting the expunction remedy provided in his recommended Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge employees because they engage in concerted protected activities.

WE WILL NOT discourage membership in or activities on behalf of Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging employees or otherwise discriminating against them in their hire or tenure.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Karen G. Holk immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL notify her that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

HABERSTROH FARM PRODUCTS, INC.

DECISION

STATEMENT OF THE CASE

FINDINGS OF FACT

WALTER H. MALONEY, JR., Administrative Law Judge. This case came on for hearing before me at Detroit, Michigan, on an unfair labor practice complaint[1] issued by the Regional Director for Region 7, which alleges that the Respondent, Haberstroh Farm Products, Inc.,[2] violated Section 8(a)(1) and (3) of the Act. More particularly, the complaint alleges that the Respondent discharged Charging Party Karen G. Holk because Holk engaged in concerted protected activities and because she was appointed shop steward. The Respondent denies these allegations and asserts that Holk was discharged because she failed to meet the Company's expectations during her probationary period. Upon these contentions the issues herein were drawn.

[1] The principal docket entries in this case are as follows:

Charge filed by Karen G. Holk against the Respondent on July 20, 1982; amended charge filed by the Charging Party against the Respondent on August 25, 1982; complaint issued against the Respondent by the Regional Director on September 3, 1982; the Respondent's answer filed on September 16, 1982; hearing held in Detroit, Michigan, on October 18, 1983; briefs filed with me by the General Counsel and the Respondent on December 21, 1983.

[2] The Respondent admits, and I find, that it is a Michigan corporation which maintains its principal place of business in Mt. Clemens, Michigan, where it is engaged in the manufacture, sale, and distribution of precooked bacon and related products. During the fiscal year ending October 31, 1981, the Respondent, at its Mt. Clemens, Michigan plant, sold and distributed products valued in excess of $1 million, including products valued in excess of $50,000 which were shipped directly from the State of Michigan to points and places located outside Michigan. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (herein called Union), is a labor organization within the meaning of Sec. 2(5) of the Act.

I. THE UNFAIR LABOR PRACTICES ALLEGED

The Respondent operates a plant in Mt. Clemens, Michigan, where it employs about 180 people who are engaged in the slicing, cooking, and packing of bacon. Its operation is conducted on an assembly-line basis. Slabs of bacon are sliced into strips by automatic slicers, placed on a conveyor belt, and then transported to an oven where they are cooked for 5-7 minutes. The cooked bacon emerges from the oven on another assembly line, where groups of packers, standing on either side of the line, remove the bacon from the conveyor and put it in boxes, which are shipped to organizations such as Friendly Restaurants, Burger King, and other purveyors of fine foods.

The employees working in this operation are, for the most part, unskilled and are called on to exhibit little or no training in the performance of their duties. Since 1979, they have been represented by the Union and are currently covered by a contract which expires April 30, 1984. In mid-April 1982, the Respondent supplemented its two regular weekday shifts with a weekend operation. Before inaugurating the weekend shift, it obtained from the Union various modifications or concessions from the existing production and maintenance unit contract which were applicable exclusively to weekend employees. The Union was reluctant to grant these concessions and did so, according to Company President Thomas Klein, only on the understanding that the weekend operation would be temporary in character. This shift was eventually discontinued on July 25 and many of the employees on that shift were given jobs on one of the weekday shifts.

A large number of untrained and unskilled employees were hired within a short period of time to man the weekend operation. At its peak, this shift included about 70 employees, who worked 10-hour days both on Saturday and Sunday. Each employee hired for this shift was presented with a sheet of paper entitled "Information as to Wages and Fringe Benefits" for part-time employees on the third, or weekend, shift. Each applicant was required to sign this sheet acknowledging that he or she was aware of its contents. Among the items outlined on the information sheet was the wage rate beginning at $4.70 an hour and increasing in 15-cent increments at 45-, 90-, and 120-day intervals, as well as at an employee's 6-month anniversary date. Weekend shift employees were also slated to receive certain automatic raises contained in the union contract, as well as pro rata vacation benefits and holiday pay if the contractually paid holiday actually fell on one of the weekend days on which a third-shift employee was working. Weekend employees also would receive time and a half for more than 8 hours worked on any 1 day, as distinguished from premium pay for all Sunday work provided in the contract for full-time employees. Under the terms of their employment, weekend employees would enjoy no seniority but would have to become union members after 30 days of employment. Of particular consequence to this case is that the 60-day probationary period governing the initial employment of weekday employees would also apply to the weekend shift, although this provision was not spelled out in the information sheet. Moreover, the sheet made no mention of contract health and pension benefits, none of which would apply to weekend employees.

Charging Party Karen G. Holk was interviewed for employment on April 7, 1982, and was requested to sign the conventional forms associated with the hiring of a new employee. She was also required to take a physical examination at a nearby hospital at her own expense and was informed that, if she were hired, the $8.50 fee charged for the examination would be reimbursed. She took the exam and left a document certifying its contents at the Respondent's office on the afternoon of April 7. A few days later she was notified that she was hired and was directed to report for work on Saturday, April 17. Thereafter, she continued to work seven weekends, until she was discharged on Friday, June 4.[3]

During her employment at Haberstroh, Holk worked for Foreman Michael Dodge. Dodge was principally employed as weekend foreman, although he had certain duties during the week. Dodge was a new employee at the Respondent's plant and was hired to set up and separate the weekend shift. Since the events here in question, he has quit to go to school. It was Dodge who first interviewed Holk and who supervised her work during the seven weekends of her employment.

The Respondent hired about 35 or 40 new weekend employees on Holk's first day of employment and an equal number of new employees about 2 weeks later. Dodge, who was apparently the only foreman on the job during the weekend shift, described the scene at the plant on these days as little short of pandemonium. Many of the new employees were undesirable and many found the jobs they were given to be undesirable, so there was a great turnover and a constant inflow of new people during the outset of the weekend operation.[4]

During the first 3 days of her employment, Holk was assigned to work on the main assembly line as a packer. Along with several other women she would remove strips of precooked bacon from a conveyor and place them in packages for shipment. On Sunday, April 25, a vacancy developed on the slicer on line 5. Dodge offered the position to her and she accepted. She later found that the job paid $1 an hour more than what she was receiving as a packer.

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[3] Holk's 1982 paystubs and timecards reveal the following information concerning her employment:

Days worked	Weekend hours paid
4/17 and 4/18	20
4/24 and 4/25	24
5/1 and 5/2	15
5/8 and 5/9	18-1/4
5/15 and 5/16	24
5/22 and 5/23	20
5/29	10

She received $4.70 an hour during the first 3 days of her employment and $5.70 per hour thereafter. The number of hours recited above includes the number of hours added to her timecard for overtime payment purposes. She did not work May 30 because it was a holiday which fell on a weekend.

[4] During the employment interview, Dodge showed Holk the operation and told her that an employee did not have to be intelligent to work in the plant, just have a strong back.

Dodge gave her a few minutes of instruction as a slicer before she started to work. The slicer takes 7–10-pound slabs of bacon and, with the assistance of an automatic feeder, runs them through a slicing machine which cuts the bacon into strips. This is the initial job on the assembly line and is located in another part of the plant far removed from where the packers are working. After working at the job for about 6 hours, Holk found that the threads on the automatic feeder were not working and were not pushing the bacon into the slicer, so she started to push it through manually. She asked Dodge and the maintenance man for help and was told that parts for the feeder were on order but were not in stock, so she would just have to continue to feed the machine manually. At this point Dodge said that he would have to replace Holk with someone who was taller because he did not want anyone getting hurt on the job. He assigned Denise Estapa to the job and transferred Holk to the job of inspecting, a job which paid slightly more than a packer's job but considerably less than the slicer's job.[5]

On the following weekend (May 1 and 2), the slicer-loader on line 7, Wayne Barthalomew, did not report to work and Dodge assigned Holk to his job. She continued to work as slicer-loader on line 7 for the balance of her employment by the Respondent.

As weekend employees became acclimated at the plant, they began to question several of the terms and conditions of their employment, especially in comparison with the privileges and benefits received by full-time employees. Holk was in the middle of these conversations. As Luella Golembiewski put it, Holk "was kind of acting as spokesperson" to management for other employees.[6] One question which arose was whether weekend employees were eligible for the company health and hospitalization plan. Another question discussed among employees was thier discovery that certain jobs in the plant paid more than others. They wondered aloud how eligibility for higher paying positions was to be determined. At a lunch break which occurred sometime during the weekend of May 1–2, Holk met privately with Dodge in the foreman's office to discuss these matters. She asked him whether or not it was true that employees on the weekend shift would become eligible for fringe benefits in November. Dodge pointed to the last line on the individual information sheet provided to each weekend employee and told her that they would not be getting any fringe benefits. Holk then informed Dodge that some employees had learned that certain jobs in the plant paid more than others, although they had started to work under the assumption that all jobs in the plant paid $4.70 an hour. She asked him how employees might go about getting the better paying jobs. The record contains no reply to this question. However, Holk went on to ask Dodge if he would hold a meeting with employees to answer some of their questions. He said he would do so, but he did not get around to it until May 29, Holk's last day of work. She voiced the opinion that it was unfair to require weekend employees to join the Union if they were not going to receive benefits under the union contract, and informed Dodge that some employees were of the opinion that they had no obligation to join at all.

As a result of the time spent at this meeting, Holk was 5 or 10 minutes late returning to her place at the beginning of the assembly line. When he noticed that production was not moving on line 7, Dodge came back to question Holk as to why she was late. She replied that she had been in the ladies' room and that it was crowded so she was late in returning.[7] Howard testified that Holk was sarcastic when she replied to Dodge.

On the following weekend, Holk had another discussion with Dodge in his office during the lunch hour. One of the functions assigned to utilityman Joe LaFada was to bring slabs of bacon from the refrigerator and stack them near the two slicer-loaders so these employees could insert them in the slicing machines. When LaFada failed to do his job, someone else—often the slicer-loader—had to leave the machine and go after the bacon. Several of the employees at the beginning of the production line had complained among themselves that LaFada was not doing his job and was making it harder on them since they had to perform both his job and their own. Holk told Dodge about this problem in his office, complained that LaFada was in the men's room sleeping when he should have been working, and asked Dodge to get LaFada out of the bathroom and put him to work. She added that this was not the first time this had happened, adding that the employees were getting tired of doing his job plus their own and resented seeing LaFada get paid for sleeping on the job. Dodge's reply was that LaFada had been working 50–60 hours during the regular workweek and was tired. Holk argued that, if he were tired, he should not be at the plant at all. Dodge then told her that the Company was letting him go. Her parting shot was "what you do with him is your business. Please get him and have him do his work."

During the weekend of May 21–22, Holk had a third conversation with Dodge in his office during her lunch hour. Her inquiry on this occasion pertained to a paper which had been posted asking weekend employees to sign up if they were interested in full-time employment. She asked Dodge if it were true that weekend employees

[5] Estapa's testimony corroborates Holk's version that she was being replaced on the slicer because Dodge wanted a taller woman working on that machine. When he approached Estapa about being transferred to the slicer, he asked her how tall she was and she replied about "five eight." (Holk's physicial examination form indicates that she is 5 feet 2 inches.) Dodge testified that he took Holk off the slicer because she was not attentive to her duties and engaged in excessive talking with other employees. I discredit Dodge. Dodge also testified that he took her off and assigned her to be a packer. Holk said she was assigned to be an inspector. Her pay record and timecard show no reduction in her wage rate at this time. I credit her recollection on this event as well.

[6] This assessment was shared by the Respondent's witness Laurie Howard. It was apparently shared by weekday Shop Steward Earl Reynolds, who recommended her to the Union to be the weekend steward "because she was a leader."

[7] Because the slicer-loader is located at the beginning of the bacon-frying process, she is supposed to leave for breaks 5 minutes before the rest of the employees on the line and return 5 minutes early in order to set the production process back in motion. Dodge testified that, on the occasion in question, he had come back to find out what was wrong and why no bacon was coming out of the oven, but he gave no testimony at all concerning his meeting in the office with Holk nor any other discussions which he held with Holk concerning compensation or working conditions. As her accounts of these discussions are uncontradicted in the record, I credit them.

would be given preference in filling full-time vacancies. He replied that they would. She told him that some of the girls has signed up for full-time jobs during the week but had learned that the Company was hiring employees off the street for those positions. Dodge assured her that he would look into this question. She then asked if anything else had changed between the Company and the Union, noting that this change had taken place although no one on the weekend shift had been made aware of it. He told her that this was the only change which had occurred. She then asked to see a copy of the contract. Dodge pointed to a copy of the information sheet which weekend employees had signed and told her that this was their contract. Holk disagreed, saying that it was not their contract but merely an information sheet. She insisted on seeing a copy of the regular collective-bargaining agreement between the Union and the Respondent. Dodge told her that he would try to get a copy for her.

Dodge testified that when he was watching Holk she performed her job quite satisfactorily. However, he noticed from time to time that there were gaps on the line, i.e., periods of time when no bacon was coming out of the oven. He attributed this occurrence to his belief that Holk was not consistently feeding the slicer at the beginning of the production process and stated that, on several occasions, he had watched her unnoticed through a slot in the door near her work station and found that she was away from her machine, often talking with the sorter who was stationed just beyond the slicer. The sorter has the duty of spreading out the bacon strips along the conveyor belt so they will enter the oven in separated strips. Dodge testified that he repeatedly warned her about leaving her machine and talking with other employees. Holk testified that he never did. I think both partisans were exaggerating, and I credit Howard's testimony that on two of three occasions during the month of May Dodge spoke to Holk about this problem. It is equally true that gaps could and did occur in the bacon coming down the conveyor on line 7 because the slicer had broken down, because the bacon had become stuck in the slicer, or because of oven fires. None of these production problems could be attributed to Holk.

Toward the end of May, Holk brought many of the problems occurring on the weekend shift to the attention of Earl Reynolds, the regular weekday shop steward. Reynolds lived near the plant and occasionally came over on weekends. However, it was in a phone conversation with Reynolds at his home that she alerted him to the dissatisfaction whch was brewing on her shift. Reynolds brought these matters to the attention of Richard Grimaud, the Union's business agent. At one time, Grimaud visited the plant during a weekend shift and asked for a volunteer to be weekend shop steward but, as the shift members were still serving their probationary period, he got no takers.

Dodge testified at length concerning certain conversations which he assertedly had with Reynolds during the month of May and preceding the discharge of the discriminatee. Regrettably Reynolds died during the summer of 1982 and cannot confirm or deny the contents of these conversations. Of equal or greater consequence in the adjudication of this case is the fact that Dodge's testimony was a jumble of argument, internal and external contradictions, evasions, lapses of memory, and outright absurdities, so he cannot be properly relied on unless his testimony is corroborated by other testimony or facts elicited from objective sources.

Toward the end of May, Dodge assertedly approached Reynolds and told him that he needed more time to evaluate certain new weekend employees before the expiration of the 60-day probationary period contained in the contract. He argued that he needed 60 working days, not merely 60 calendar days, to determine whether an employee should be retained because he only was able to observe their performance 2 days a week, not 5 days a week as in the case of a regular full-time worker. Reynolds reportedly turned him down, saying that the probationary period ended 60 calendar days after an employee was hired. This position on the part of the Union was supported by Grimaud in his testimony, so I credit this much of Dodge's account of his conversation with Reynolds.

In response to leading questions, Dodge also testified that Reynolds told him that the 60-day period began to run from the date of initial interview (in Holk's case, April 7), not from an employee's first day of work. Such an interpretation on its face is strained and absurd, especially inasmuch as Holk was not informed that she had actually been hired until several days after her April 7 interview. It also conflicts with the Union's stated interpretation of the contract, as explained by Grimaud in his testimony, namely, that the probationary period begins to run the first day an employee actually works (in Holk's case, April 17). It is noteworthy that, despite the fact that Grimaud and Dodge held a lengthy discussion as to the meaning of the probationary employee clause when Grimaud visited the plant on May 29, the subject of when the probationary period starts to run was never brought up. The language of the contract reads, "A new employee shall work under the provisions of this agreement but shall be employed for a trial basis of sixty calendar days . . . ." I discredit Dodge's testimony that Reynolds told him that the probationary period began to run on the date of hiring-in interview and conclude that an unreliable witness was simply taking advantage of the permanent unavailability of another party to a conversation to report a remark which was never made. I also discredit Dodge's statement that he asked Reynolds for an extension of the probationary period of Holk so that he could evaluate her as a packer and that Reynolds, a shop steward, said in reply: "No, you'll just have to fire her." I note that no such request was made to Grimaud, a live witness, respecting Holk when Grimaud and Dodge discussed Holk's status as weekend shop steward extensively on May 29.[8]

[8] In proceedings in many States, such testimony would simply be inadmissible under so-called Dead Man's statutes. The Board has never adopted a Dead Man's rule, but it has repeatedly stated that it will scrutinize with great care conversations reportedly held with deceased persons. *Chung King Sales*, 126 NLRB 851 (1960); *Pasadena Bowling Center*, 150 NLRB 729 (1965); *Calandra Photo*, 151 NLRB 660 (1965).

Because grievances concerning the weekend shift were starting to be brought to Grimaud's attention, he sought and obtained permission from the Union's executive board to appoint Holk the weekend shop steward. This permission was obtained about the last week in May. He had not met Holk but had submitted her name on Reynold's recommendation. This procedure was somewhat unusual since stewards are normally elected from the ranks of those whose names appear on the seniority list and the names of probationary employees do not appear on the seniority list.

During the last week in May, a general grievance meeting was held at the plant between Grimaud, Reynolds, Delores Barnett, the day shift steward, Robert J. Parks, the Respondent's manager of operations, and Dennis Rose, the Respondent's production manager.[9] They discussed the question of making weekend employees eligible for medical insurance and seniority. Parks agreed to permit weekend shift employees to bid on full-time job vacancies. Reynolds brought along a notebook and read off a list of other grievances pertaining to full-time employees. In the course of the discussion, Parks asked who was making the complaints on the weekend shift and was told that it was the slicer on line 7. Following the meeting, Reynolds and Grimaud met privately. Reynolds suggested that Grimaud visit the plant on a weekend and Grimaud agreed to come out the following Saturday.

Meanwhile, the Respondent's management was having discussions of its own. On an indeterminate date sometime in middle or late May, Klein held a meeting with Parks, Rose, and Dodge to discuss employees on the weekend shift. The precise elements of the conversation at this meeting are not in the record, but its substance was Klein's effort to bring to the attention of these supervisors the fact that there was a 60-day probation clause in the contract and it would be well to determine if there were any weekend employees who should be let go before the probationary period expired. Dodge suggested the names of some employees who he felt might not be able to do the job. Holk was among those whose name was mentioned. The same group met on Friday, May 28, and held the same discussion. Again they reviewed names of employees who Dodge felt might be discharged before the expiration of the probationary period. They accepted Dodge's recommendations of who should be discharged.[10] Again, Holk was among them. The statements made by Rose were uttered in the presence of management representatives and were ratified by them. Accordingly, they are attributable to the Respondent, irrespective of whether Rose is or is not a supervisor.

On Saturday, May 29, Grimaud visited the plant in the company of Reynolds. One of the purposes of his visit was to meet Holk and see if she would agree to become the weekend shop steward. Upon entering the plant, Grimaud spoke for a period of time with Dodge and discussed with him some of the problems which had arisen on the weekend shift. One of the questions which they discussed was whether the probationary period in the contract extended to 60 working days or 60 calendar days. Dodge throught it should be the former, since weekend employees worked only 2 days a week, as distinguished from the 5-day week which full-time employees worked, and he argued that 14 or 16 working days was an insufficient time to evaluate a new employee. Grimaud insisted that the contract called for 60 calendar days and, after that period, employees went on the seniority list. Dodge then asked Grimaud if he were going to appoint a weekend steward. Grimaud asked him why he wanted to know. Dodge then said that there were three to five people that he was planning to discharge and he did not want Grimaud to pick one of them as shop steward. Grimaud told Dodge that he would inform him before leaving the plant whom he had selected for shop steward and asked to see Holk. Dodge replied that he did not know if he could free her from her duties since had had no one to replace her on the slicer. Apparently he was able to find a temporary replacement because, about 15 minutes later, Holk appeared in the company office for a discussion with Grimaud. The latter explained that he was going to pick an assistant steward for the weekend shift to work under the supervision of Reynolds and asked her if she would serve. She agreed and, after a brief discussion, returned to her duties.

Before leaving the plant, Grimaud informed Dodge that he had appointed Holk as a shop steward. Dodge then expressed displeasure at the appointment and informed Grimaud that he was going to let her go. Grimaud became angry at learning of this decision. He told Dodge that he was making a big mistake and emphatically suggested that he talk to Parks about the matter and leave the decision up to him.

At the final break, Dodge called Holk into his office for a discussion. He told her that there were gaps in the bacon line. Holk insisted that the only gaps in the line were when the line shut down or when the slicer was clogged with soft bacon. She reminded Dodge that he had complained about running soft bacon and that he had instructed her to go ahead and run it soft. He then replied, "Just try and watch out for your gaps." As the meeting concluded, Holk asked him whether he was going to have the meeting with employees which he had promised, telling him that some of the employees were saying that they did not have to join the Union and she did not want to see anyone lose her job just because she believed a rumor.

At the end of the shift, Dodge held a brief meeting of employees in the lunchroom. Most of the meeting was devoted to a denial by Dodge that he was a homosexual. As the meeting concluded, Holk asked him if he were going to tell the employees that they had to join the Union. Dodge's parting remarks were, "Oh, yes. This is a union company. You have to join the union or you will be fired."

[9] Neither Rose nor Parks was called to testify, so the testimony of Grimaud and Barnett concerning this grievance meeting is uncontradicted in the record.

[10] The record contains assertions both by Klein and Dodge that the latter was empowered to hire and fire without consulting higher management.

Over the weekend, Dodge phoned Klein at Klein's home and told him about the heated conversation which had taken place between Grimaud and himself. He asked Klein what he should do, reminding Klein that he was scheduled to be on vacation the following week. Klein said he would take care of it.

The following week Parks called Holk at her home and requested that she see him at the plant. On Friday, June 4, she came to Klein's office and met with Klein and Parks. Klein told her that he wanted personally to inform her that she was fired. She asked why and he replied that he had about five conversations with Dodge about her. She pressed him for reasons, so he replied, "Number one, there is a personality conflict. Number two . . . ." At this point, she interrupted and asked to discuss the question of personality conflict, but Klein insisted in going on, telling her that this was his shop and he had the right to terminate her within 60 days. She asked for a written statement of reasons and Klein said he did not have to give her one. She insisted that he did, so he told her he would supply her one if he had to do so. Klein then told her, "I have never had any union problems. I have never had to fire a supervisor." Holk objected, "I have never asked to have anything changed on a contract. I have never asked to have a supervisor fired." Klein abruptly terminated the discussion, telling her that he did not want to hear any more, that he could do what he wanted to do, and that this is what he was going to do. Her final words were, "You do what you want and I will do what I have to do."

Holk filed a grievance and a meeting was held concerning that grievance about 2 weeks later. Grimaud and Barnett were present for the Union and Dodge, Parks, and Rose were present for the Company. At the outset of the meeting, Grimaud asked for a written statement of the reasons for the discharge, criticizing management for not notifying him of the fact that a discharge had taken place. He said that this was not the first time it had happened and he wanted it stopped. Parks provided him with a letter which said that Holk was not "living up the Company's expectations." He asked Parks what he meant by that phrase and Parks replied, "She wasn't working up to standard." Grimaud stated that it seemed funny that the Company would put a woman on such a high-paying job rather than a general production job if she could not handle it. He also asked Parks why, if she were not up to standard, did he not simply take her off the job. His reply was that they were trying to give her more of an opportunity. Parks then turned to Holk and said, "You know why you are being fired." She said, "No," and he said, "I heard rumors you had a big mouth and are causing trouble out there." She asked him what he meant and he said that she was discussing medical insurance on company time with employees on the weekend shift. Holk insisted that she was doing it on her lunch hour. He then brought up the fact that she had been late on one occasion in returning from lunch and had taken 45 minutes rather than the allotted half hour. She admitted that she had come back to work late on one occasion and asked him why, if this was the reason for her discharge, did he not fire her then. Parks made no reply. Grimaud asked Parks whether he had given her a written warning before discharging her, as required by the contract. Parks replied that he had not done so. Grimaud asked for an explanation of this omission and Parks replied that probationary employees were not entitled to written warning. Grimaud then told Dodge that the least he could have done was to give her a warning if she were doing something wrong, noting that the Company had done this for other employees. Holk argued that she did her work well and could prove it. She referred to a chalkboard which the Company maintained near the production lines on which it posted production figures and stated that these figures showed that line 7 (her line) was running better than line 5. Rose replied that line 7 should run better because the slicer on that line is bigger and faster. Holk argued that this was irrelevant, noting that a bigger slicer would not produce more production if the slicer-loader was not inserting bacon into the machine. "What good is a big fast empty oven?" she asked. The meeting ended with Grimaud asking that Holk be reinstated with backpay. Parks refused.

The Union consulted legal counsel and decided not to press the grievance any further because of advice that the grievance and arbitration provisions of the contract did not apply to probationary employees. A month later, Holk filed the charge in this case.

II. ANALYSIS AND CONCLUSIONS

Respondent takes the position that it fired Holk for just cause in the exercise of its business judgment and that the Board is not free to second-guess its judgment. Its counsel argued that the bottom line in this dispute is whether or not the Company had cause to fire her. This is an erroneous view of the law. In an arbitration case, the ultimate question may be whether the Respondent had just cause for discharging an employee but, under the Act, the ultimate issue is not justification but motivation—what in fact prompted the Respondent to take the action it took, irrespective of whether it had cause to do so. The Respondent further argues that, even though Holk was the weekend shop steward when it fired her, this fact did not prompt it to fire her because it had already decided to take this action before it learned of her appointment. The fact that she was a steward on the day of her discharge was just an embarrassing coincidence. The problem with this defense is determining just when the Respondent decided to fire her. Its evidence on this point vacillates sharply.

At the time Holk was discharged, the Respondent had acquired from the Union a valuable concession in the form of a weekend shift, whose employees were producing fried bacon strips much more cheaply than the full-time weekday employees could possibly make them.[11] As new employees, the weekend shift was, for the most part, being paid at the bottom of the scale without any longevity increases. Their compensation involved no big

[11] Klein stated that the only way the Company would wrest these concessions from the Union during the contract term was to agree that the weekend shift would be temporary. However, the fact sheet given to each new weekend employee contained wage information extending from March 12, 1982, all the way to November 1983.

ticket items such as health insurance, premium pay for all weekend work, and holiday pay for makeup holidays, i.e., days off which are taken when a paid holiday falls on a weekend. Moreover, the existence of a weekend shift modified or eliminated the necessity for overtime among expensive weekday employees. Weekend employees had no seniority, at least at the beginning, and apparently did not enjoy any other regular contractual privileges. The favorable impact of this concession on the Respondent's profit picture and its ability to outbid the competition can hardly be exaggerated. Correspondingly, anything or anyone who might jeopardize this concession, such as by insisting that weekend employees should enjoy regular contractual rights, posed a real threat to the Respondent's financial health. As Parks said at Holk's grievance meeting, by going into Dodge's office and asking questions concerning the status of weekend employees, Holk was jeopardizing the Company's Burger King contract. This is what he was referring to when he spoke about rumors that she had a "big mouth." Within 2 weeks after she had done so, she was gone.

Holk's concerted protected activities commenced almost at the beginning of her employment with the Respondent. During the second weekend she was on the job, she and other employees became concerned about whether weekend employees were or could become eligible for medical and hospital benefits. They had found out that there was a wage differential for various jobs and wanted to know how to become eligible for the better paying positions. It was Holk who went to Dodge's office to inform him of those concerns and to press the point that it was unfair for the Company to require weekend employees to join the Union if contract benefits enjoyed by unionized employees were not going to be extended to them. She asked Dodge to schedule a meeting with employees to discuss their wages and benefits, a meeting which he did not hold until he was reminded to do so a month later by Holk after she had been appointed shop steward.

On the following weekend, Holk told Dodge of the displeasure of her fellow employees in having to do the work of a utilityman who was sleeping in the men's room when he was supposed to be bringing bacon from the refrigerator to the slicers. She asked him to get the man and put him to work. A couple of weeks later she was back in Dodge's office, letting him know of the concern of weekend employees in being eligible to bid on weekday jobs and voicing their concern that the Company was hiring employees off the street to fill full-time positions instead of giving weekend employees a preferential shot at them. It was on this occasion that Holk made the fatal mistake of asking to see the contract. Dodge put her off, telling her that the individual information sheets signed by weekend employees were their contract. Holk was not to be put off and insisted on seeing a copy of the collective-bargaining agreement between the Respondent and the Union which covered the full-time employees in the bargaining unit. The implication of this request was profound because it signaled the beginning of an effort to bring weekend employees under the more expensive provisions of the collective-bargaining agreement. Such activities are concerted and are protected by the Act.

About this point in time, Holk began to contact the weekday shop steward and to place the grievances and concerns of the weekend shift into regular union channels. These grievances were brought to the attention of management by Reynolds at a regular grievance meeting which took place before Holk was discharged. At this meeting Parks asked who was providing Reynolds with his information and was informed that it was the slicer on line 7. This came as no surprise to the Respondent since Holk was acting as a de facto shop steward almost since the outset of her employment. It was not until her last day of work that the title was formally bestowed on her but she fulfilled the function for nearly a month without awaiting any formalities. The reason the Union chose her for this job was that she had exhibited leadership in the plant, a quality which the Respondent had also noted on several occasions.

Her discharge interview and the grievance meeting which took place thereafter also gave revealing clues as to the Respondent's real reason for the discharge. In the course of an argument with Holk on June 4, Klein told her that he never had any union trouble before and he was not going to have any then. At a grievance meeting 2 weeks later which the Union attended to protest her firing, Parks called her a "big mouth" and said that her effort in trying to get the Company to observe the terms of the union contract on the weekend shift were jeopardizing one of its big contracts. Quite apart from her designation as shop steward, Holk was an energetic and outspoken leader in pressing employee claims and concerns, and this fact was well known to the Respondent. The only thing it had trouble finding out was a convenient and uncontroversial way to remove her from the work force.

Dodge's testimony as to when he decided to fire Holk was internally inconsistent. In mid-May, he reportedly told Reynolds, the deceased shop steward, that he wanted an extension of her probationary period (and presumably that of other employees) because he wanted to put Holk back on the packing line to see how she might work out in that job and needed more time to evaluate her in that position. However, he did not put her back on the packing line and continued to utilize her as a slicer-loader until her discharge, despite her allegedly unsatisfactory performance. Toward the end of May, he reportedly talked with Rose and Klein about her and about discharging her. On one occasion, Dodge said that he was not sure that he had made a firm decision to fire Holk by mid-May, when his alleged conversation with Reynolds took place. In other testimony he said that he was pretty sure she "was gone" by then. Later, he said that a firm commitment to fire her was not made until "right at the end," maybe a week before her last day of work. On Holk's last day of work, Dodge told Grimaud that he was considering firing three to five probationary employees, a statement indicating that there was still some uncertainty about the decision. After learning that Holk had been appointed steward, Dodge told Grimaud that he was going to fire her. He later testified that, in the cases of other probationary employees slated for discharge, he had decided to discharge some of them and

later changed his mind after talking with them. When he spoke with Holk near the end of her final tour of duty on May 29, he gave her no inkling that she was being discharged, limiting his remarks to a cautionary statement to watch the gaps on the bacon line. However, by this time he had told Grimaud of his decision. At no time did he ever warn her that discharge was in the offing unless she improved her job performance. The manner of her discharge was also peculiar. Dodge clearly had the authority to fire her and, despite the warning from Grimaud on May 29, already had top management approval by that time to discharge her. Yet he declined to do so, leaving it to Klein to effectuate the company decision.

Dodge said that he had repeatedly criticized her for gaps in the bacon line, coming back to the line late from breaks, and leaving her post to talk with other employees. Other employees testified that there were no gaps on the line except those caused by breakdown. Holk insists with equal, if not greater, firmness that the only criticisms of her job performance which she ever received from Dodge were on May 1, when she returned from lunch late after bringing an employee complaint to his attention, and at the last break on her final day of work. Howard's testimony was somewhere in between, offering generalities that Dodge criticized Holk repeatedly for gaps in the line or for being away from the machine, then backing down from her statement and limiting her testimony to a statement that this happened on two or three occasions. Howard's testimony is as near as we will ever get to the truth.

The major arguments illustrating the pretextual nature of the Respondent's reasons for discharging a known activist were brought to the Company's attention at the grievance meeting in mid-June. If Holk were really an unsatisfactory slicer-loader and this fact was known to Dodge as early as mid-May, it was wholly inconsistent of him to leave her in this position rather than assign her to less demanding, less remunerative work on the line where she could be constantly watched. Dodge was asked on the stand why he failed to transfer her and he had no answer, not did any of the Respondent's management give any but the lamest reply when Grimaud posed the same question to them at a grievance meeting. Dodge admitted that he had never warned her, either verbally or in writing, that she was liable to discharge if she did not improve. The Company's only excuse to Grimaud for not doing so related to what it was obligated by contract to do rather than what the logic of the situation demanded, if it were really interested in retaining Holk as a productive employee.

Moreover, the timing of the discharge is suspect. The Respondent's unspoken premise seemed to be that it had to discharge Holk before the expiration of the probationary period or it could not do so at all. There is not a whit of support for this position and it defies explanation. Secondly, Holk came to work on April 17, so her probationary period did not expire until June 16, leaving two weekends between her final day of work on May 29 and the time she would attain permanent status under the contract. Taking the Respondent's premise at face value, if Dodge really wanted to give her a chance to work out as a packer, as he said he did, he had 2 more weeks to find out as of the date on which the Respondent fired her. There was nothing pressing on the Memorial Day weekend of 1982 which necessitated her discharge at that time and in the unusual manner in which it occurred.

Finally, Dodge assertedly told Reynolds in mid-May that he needed more time to evaluate Holk as a packer and asked for an extension of her probationary period for this purpose, deciding to fire her only because the Union arbitrarily refused to accede to his request. A packer fills a routine unskilled production job for which no more than 5 minutes' training is required. Holk had already done the job before being promoted from that job to the position of slicer-loader. It is inconceivable that, as of May 15, Dodge needed more than a full month of weekends to see if she were still qualified to do the most mundane work in the plant. The Board need not accept such an absurdity on the ground that it is simply an exercise in business judgment, and this would be the case if it took Dodge's statement at face value.

Holk was a well-known activist who engaged in concerted protected activities on behalf of her fellow employees and in union activities in seeking to apply to these individuals and to herself as well the terms and conditions of an existing collective-bargaining agreement. She was rocking the boat in a critical way at a critical time. Her activism was well known to the Respondent and was thrown in her face, both at her terminal interview and at a grievance meeting thereafter. The ostensible reason for her discharge was patently false and relies for its support on the testimony of a witness whose evidence was wholly unreliable. Accordingly, I conclude that the Respondent discharged Karen G. Holk because she engaged in union activities and in protected concerted activities and, in doing so, violated Section 8(a)(1) and (3) of the Act.

On the foregoing findings of fact and on the entire record herein considered as a whole, I make the following

CONCLUSIONS OF LAW

1. Respondent Haberstroh Farm Products, Inc. is now and at all times material herein has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Karen G. Holk because she was in sympathy with and had engaged in activities on behalf of the Union, the Respondent herein violated Section 8(a)(3) of the Act.

4. By discharging Karen G. Holk for the reasons stated above in Conclusion of Law 3 and because she engaged in concerted protected activities, the Respondent herein violated Section 8(a)(1) of the Act. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take other affirmative actions which are designed to effectuate the purposes and policies of the Act. The recommended Order will provide that the Respondent be required to reinstate Karen G. Holk to her former or substantially equivalent position, or to a position which she would normally occupy if she had not been discriminatorily discharged, and to make her whole for any loss of earnings or benefits which she may have suffered by reason of the discrimination practiced against her, in accordance with the *Woolworth* forumula,[12] with interest thereon at the adjusted prime rate used by the Internal Revenue Service for the computation of tax payments. *Olympic Medical Corp.*, 250 NLRB 146 (1980); *Isis Plumbing Co.*, 138 NLRB 716 (1962). I will also recommend that the Respondent be required to post the usual notice, advising its employees of their rights and of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I make the following recommended[13]

ORDER

The Respondent, Haberstroh Farm Products, Inc., Mt. Clemens, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they have engaged in concerted, protected activities.

(b) Discouraging membership in and activities on behalf of Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging employees or otherwise discriminating against them in their hire or tenure.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act.

(a) Offer full and immediate reinstatement to Karen G. Holk to her former or substantially equivalent position or to a position which she would normally occupy if she had not been discriminatorily discharged, and make her whole for any loss of pay or benefits which she may have suffered by reason of the discrimination found herein, in the manner described above in the section of this decision entitled "Remedy."

(b) Expunge from its files any reference to the discharge of Karen G. Holk and notify her in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis of future discipline against her.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at the Respondent's place of business in Mt. Clemens, Michigan, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."